

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 243 OF 2024

Avinash Sakharam Moule

Applicant

.. (Accused No. 2)

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Ashok Mundargi, Senior Advocate a/w Mr. Jayant Bardeskar, Advocates for Applicant
- Mr. Dinesh J. Haldankar, APP for Respondent - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2025

P. C.:

1. Heard Mr. Mundargi, learned Senior Advocate for Applicant and Mr. Haldankar, learned APP for Respondent - State.

2. Applicant - accused No. 2 has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 214/2022 registered with Chitalsar Manpada Police Station for the offences punishable under Sections 307, 143, 144, 147, 148, 149 and 120(B) of the Indian Penal Code, 1860 (for short, "**IPC**"); under Sections 3(1)(i) (ii), 3(2) and 3(4) of the the Maharashtra Control of Organised Crime Act, 1999 (for short "**MCOC Act**"); under Sections 37(1) and 135 of the Maharashtra Police Act, 1951 and under Sections 3 and 25 of the Indian Arms Act, 1959. Applicant is arrested on 17.09.2022 and as on

today he has been in incarceration for the period of 2 years 7 months & 6 days.

3. There are total 5 accused persons in the present crime. Accused No. 5 is shown to be the leader of a gang i.e. crime syndicate and having several antecedents against him. Insofar as accused Nos. 1, 2, 3 and 4 are concerned, they are alleged to be the gang members of the gang led by accused No. 5. The incident occurred in the intervening night between 16.09.2022 and 17.09.2022 at about 3:45 a.m. in the morning on a public road in Thane. Prior to the said incident at about 9.30 p.m., accused persons and the victim had attended a common party at a Dhaba where an altercation took place between accused No. 5 and the victim. Case of the prosecution is that in view of the grudge held by accused No. 5 - gang leader against the victim due to said altercation which had occurred in the party on the previous night, accused No. 5 along with other co-accused persons of his gang were waiting for the victim throughout the night.

4. Mr. Mundargi, learned Senior Advocate for Applicant would submit that statement of the first informant is appended at page No. 347 of the Application. He would submit that first informant is the victim who has alleged that accused No.5 has fired from a pistol on him and the bullet hit the glass wind-shield of the car. Admittedly there is no injury to the victim and allegation is of attempt to murder

by accused No. 5. The statement of first informant is duly supported by statement of the driver and friend of the first informant who was accompanying him in the same car. That statement is appended at page No. 446 of the Application. Both the statements are identical insofar as narration of the facts are concerned. They have stated that the car was driven by the said witness along with the first informant seated next to him sitting in the front seat of the car and when it had approached the service road near Majiwada area going towards Thane, at that time at about 3.45 a.m., accused No. 5 spotted the car and he came in front of the car and waived for the car to stop upon which the said witness who was at the steering wheel of the car stopped the car. They both have stated that accused No. 5 came to the side where the first informant was sitting and removed the revolver tucked in his pant and fired a bullet at him. They both have stated that they escaped the assault but it resulted in the glass windshield of the car being shattered due to the impact of the bullet. Insofar as the role of present Applicant - accused No. 2 is concerned, both the statements i.e. of the complainant and the witness state that Applicant - accused No. 2 along with other persons at the time when the incident had occurred was sitting on a parked scooter / motorcycle at a distance away from the incident spot under the flyover pillars. This is the only role attributed to accused No. 2 by the prosecution case. That apart,

Mr. Mundargi has also drawn my attention to the CCTV footage wherein it is recorded that Applicant was seen to be separating the quarrel between accused No. 1 and the complainant at the Dhaba party on the previous night.

5. Mr. Haldankar, learned APP has vehemently objected to the grant of bail to the Applicant and would submit that Applicant is a gang member of the organized crime syndicate headed by accused No. 5. He would submit that accused No.5 has not been arrested till date and he is absconding. He would submit that Applicant is also charged with destroying of evidence in as much as the weapon has been recovered at the behest of other co-accused persons from a rickshaw driver to whom the said weapon was given after committing the offence by accused No. 5. He would submit that considering the gravity of the crime and antecedents against the present Applicant, present Application be rejected.

6. I have considered the rival submissions of both the learned Advocates and with their able assistance perused the record of the case.

7. It is *prima facie* seen that present Applicant has three antecedents under Section 324 of IPC and it cannot be considered for the purpose of applying the provisions of Section 2-D of the MCOC Act

to the satisfaction of the Court in the present case against the Applicant before me. That apart it is seen that insofar as the actual incident which has occurred, it is the complainant's version and the eye witness account in which both state that when accused No.5 intercepted and halted their car and subsequently fired at the complainant, Applicant - accused No. 2 was not present with him rather both of them have stated that he was sitting on a parked scooter / motorcycle at a distance away from the incident spot near under the flyover pillars. *Prima facie* the aforesaid material is placed before the Court for consideration and nothing more against Applicant - accused No. 2. It is also seen that the Applicant after the incident went to friend's home and informed his about the incident and on his advice immediately approached the police station and surrendered himself.

8. In view of the above and looking to the long incarceration of the Applicant for the period of 2 years 7 months and 6 days pending trial and considering the role attributed to the present Applicant, I am inclined to grant bail to the Applicant. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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